



City of Seattle

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Gregory J. Nickels, Mayor  
**Department of Planning and Development**  
D.M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR  
OF PLANNING AND DEVELOPMENT**

**Application Number:** 2308235  
**Applicant Name:** James Jessup for Catherine Roth  
**Address of Proposal:** 2219 Fairview Avenue East #4

**SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit for future construction of a 45.5 square foot first floor addition to an existing floating home.

The following approvals are required:

**Shoreline Substantial Development Permit** - to allow a floating home in an Urban Residential (UR) shoreline environment (Section 23.60.196, Seattle Municipal Code).

**SEPA - Environmental Determination**  
(Chapter 25.05, Seattle Municipal Code).

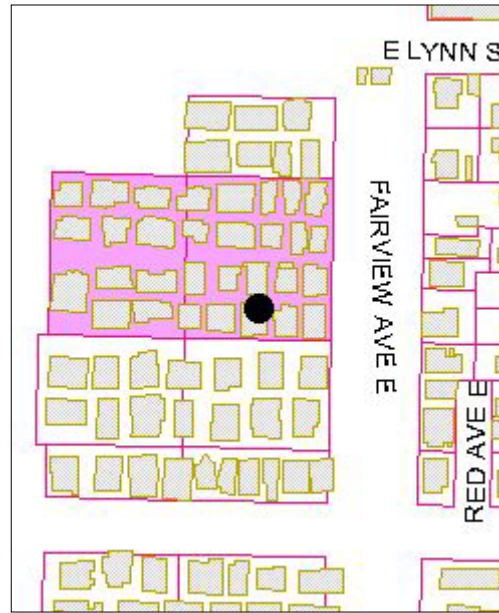
**SEPA DETERMINATION:**      ☐ Exempt   ☐ DNS   ☐ MDNS   ☐ EIS  
  
   ☐ DNS with conditions  
  
   ☒ DNS involving non-exempt grading, or demolition,  
   or involving another agency with jurisdiction.

**BACKGROUND DATA**

Site and Vicinity Description

The property is located in a Single Family 5000 (SF 5000) zone in an Urban Residential (UR) shoreline environment. The site is submerged and located along the east shoreline of Lake Union. The development site contains a total of 31 moorage slips positioned around two floating finger piers. The location of the proposed development is located at a 15-slip non-conforming

floating home moorage and is located at slip number 4. A floating wooden walkway extends west from the shoreline along the south edge of moorage slip. The houseboat moorage slips are arranged on either side of the floating finger pier with one positioned at the end. Seven of the moorage slips extend into the Washington State Department of Natural Resources (DNR) leased area, approximately 162 feet from the shoreline. The development area, floating home at slip number 4 is affixed to a float occupying an area approximately 792 square feet (36' X 22'). The two-story floating home (residential structure) sits approximately 18 feet above the waters surface. Approximately 8 feet separate the adjacent float (slip number 6) from the subject float. To the east, the separation from the adjacent floats is 9 feet. Pedestrian and vehicle access is provided from Fairview Avenue East. Vehicle access and parking is within the Fairview Avenue East right-of-way. The parking area is located to the west and below the roadway abutting the arch entry into the floating walkways.



The surrounding development along the shoreline, north and south, consists of a mix of floating homes, with vessel moorage adjacent to an apartment structure. To the east across Fairview Avenue East a variety of residential uses are found in Multifamily Lowrise One, Two and Three zones (L1, L2, and L3). A narrow band of L1 with Residential-Commercial designation (L1-R/C) runs along the east side of Fairview Avenue East. The designation allows commercial use within a building that contains residential uses. Several small neighborhood stores are located in this area. The area is densely populated with a mix of modest and affluent residential uses that include single family and apartment uses. The area slopes significant upward from Fairview Avenue East to Eastlake Avenue East, which is a primary arterial connecting the University District to South Lake Union.

### Proposal

The proposal is to remodel the first floor interior of the floating home, enclosing 45.5 square feet of outdoor space under a second floor uncovered deck. No changes to the float are proposed. The total height of the structure will remain 18 feet from the water.

### Public Comment

Date of Notice of Application:	January 1, 2004
Date End of Comment Period:	January 30, 2004
# Letters	0

No public comments were received during the public comment period, which ended on January 30, 2004.

### Other Agency Comments

Although King County Metro staff has not provided comment on the subject proposal, in the past Metro has reviewed similar proposals and offered several comments. They state that protection of the water quality of Lake Union during construction is essential and they recommend the use of construction methods which prevent toxic materials, petrochemicals and other pollutants from entering surface waters; and promptly removing any floating construction debris in the water.

The State Department of Natural Resources has offered no comments.

### **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT**

Section [23.60.030](#) of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: “*A substantial development permit shall be issued only when the development proposed is consistent with:*”

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

#### **A. The Policies and Procedures of Chapter [90.58](#) RCW**

Chapter [90.58](#) RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy seeks to protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary incidental rights. Permitted uses in the shorelines shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water. The proposed improvements to moorage slip number 4 would not adversely impact the state-wide interest of protecting the resources and ecology of the shoreline, and the improvements would provide for the continued use of a floating home dependent upon its location in a shoreline of the state. The subject application is consistent with the procedures outlined in RCW [90.58](#).

#### **B. The Regulations of this Chapter**

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on ensuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program,

codified in the Seattle Municipal Code at Chapter [23.60](#), that also incorporates the provisions of Chapter [173-27](#), WAC. [Title 23](#) of the Municipal Code is also referred to as the Land Use and Zoning Code. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions which have also been set forth in the Land Use Code.

In evaluating requests for substantial development permits, the Director must determine that a proposed use and subsequent development meets the relevant criteria set forth in the Land Use Code. The Shoreline Goals and Policies, part of the Seattle [Comprehensive Plan](#), and the purpose and location criteria for each shoreline environment must be considered. A proposal must be consistent with the general development standards of SMC [23.60.152](#), the specific standards of the shoreline environment (SMC 23.60. 840) and underlying zoning designation, any applicable special approval criteria, and the development standards for specific uses.

The proposal is subject to the Shoreline Policies of Seattle Shoreline Management Program (SSMP) [23.60.004](#), because the site is located within the shoreline district and the cost of the project exceeds \$2,500. Floating homes are a permitted use within the Urban Residential (UR) shoreline environment. The floating home is located at a moorage that is partially on a privately owned premise and partially on a privately held DNR lease of state lands and must meet the general standards of the SSMP, Section [23.60.196](#). The proposed addition to the floating home has been designed and mitigated to ensure minimum impact to the public health, land, and the waters of the state, and their aquatic life. The location and design of the floating home will not interfere with the public rights of navigation and corollary rights, thus providing for the management of the shorelines by planning for and fostering all reasonable and appropriate uses.

Chapter 23.60 of the Seattle Municipal Code is known as the “Seattle Shoreline Master Program”. In evaluating requests for substantial development permits, the Director must determine that a proposed use meets the approval criteria set forth in SSMP [23.60.030](#) (cited above). Development standards of the shoreline environment and underlying zone must be considered, and a determination made as to any special requirements (shoreline conditional use, shoreline variance, or shoreline special use permit) or conditioning that is necessary to protect and enhance the shorelines area (SSMP 23.60.064). In order to obtain a shoreline substantial development permit, the applicant must show that the proposal is consistent with the shoreline policies established in SSMP [23.60.004](#), and meets the criteria and development standards for the shoreline environment in which the site is located; any applicable special approval criteria; general development standards; and the development standards for specific uses.

Floating moorage, because of their historic role in Seattle, are designated as water dependent uses, but the increase of floating home moorage or the increase in use of the shoreline or water area by floating homes is not necessarily encouraged. The proposal will be located at an existing non-conforming moorage for floating homes. No disturbance of the lake bed will occur. The proposal for an interior remodel and change from an outdoor deck to an indoor living space to an existing floating home meets the shoreline policies of the City of Seattle.

The subject property is classified as a waterfront lot (SSMP 23.60.924) and is located within an Urban Residential (UR) environment, as designated by the Seattle Shoreline Master Program. The principal use on this waterfront lot is moorage.

The proposed project must meet the standards of the underlying Residential zone, the development standards for the UR shoreline environment (SSMP 23.60.600) and the general development standards for all shoreline environments (SSMP 23.60.152). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SSMP 23.60.064).

SSMP [23.60.570](#) and [23.60.196C](#) - Development Standards for UR Environments and Nonconforming Floating Home Moorage

All development must conform to the development standards in the UR shoreline environment, as well as the underlying Residential zone. Standards such as height, lot coverage, public access and view corridors have been met or are not affected by this proposal. Regulated public access is not required for a floating home (SSMP 23.60.638B).

The development must conform to the general standards for floating homes (SSMP 23.60.196). The proposal straddles privately owned tidelands and DNR lands and is renewing a lease with the Department of Natural Resources. The floating home remodel will not block the view corridor to the water. As proposed, the remodel of an existing floating home meets the general standards for floating homes.

The development must also conform to the general standards for non-conforming moorage in SSMP [23.60.196.C](#). Section [23.60.196.C.1](#) allows the remodeling, replacement, or rebuilding of a floating home at a moorage existing as of March 1, 1977, when the moorage does not satisfy the lot coverage, open water, site area, setback, view corridor or location provisions for conforming floating home moorage. The proposal meets the requirements of Section [23.60.196.C.1](#) in that the total float area will not be increased; the height of the floating home will not exceed 18 feet from the water; the minimum distance between adjacent floating home walls will not be decreased to less than six feet, the minimum distance between any wall and any floating home site line will not be decreased to less than three feet, no part of the floating home will be extended over water beyond the edge of the float; and the remodel will not increase the nonconformity of the floating home moorage with respect to view corridors to the water.

Seattle Comprehensive Plan - Shoreline Policies

All discretionary decisions in the shoreline district require consideration of the Shoreline Goals and Policies, which are part of the Seattle Comprehensive Plan's [Land Use Element](#), and consideration of the purpose and location criteria for each shoreline environment designation contained in SMC [23.60.220](#). The policies recognize the existing floating home community in Lake Union and Portage Bay, while protecting natural areas, preserving public access to the shoreline, and areas with substantial concentrations of existing floating homes shall be given a designation that preserves residential uses. (please refer to Land Use Policies L316). An area objective for this portion of Union Bay is to preserve the existing floating home community while at the same time to restore and enhance the Lake's natural environment. (Please refer to Area Objectives for Shorelines of Statewide Significance, Policy [L354 2](#)). The purpose of the Urban Residential (UR) environment as set forth in Section [23.60.220 C6](#) is to protect residential areas, such as existing floating home moorages.

The proposed improvements to moorage slip number 4 would facilitate the continued and enhanced operation of an existing floating home, a use supported by both the purpose of the UR shoreline environment and the policies set forth in the Land Use Element of the Comprehensive Plan. The proposed remodel to increase living space on the first floor would create greater optimization and efficiency within the water dependent use (floating home).

#### SMC [23.60.152](#) - Development Standards for all Environments

These general standards apply to all uses in the shoreline environments. The standards require that design and construction of all uses be conducted in an environmentally sound manner, consistent with the Shoreline Management Program and with best management practices for the specific use or activity. SSMP [23.60.152](#) sets forth the general development standards with which all uses must comply, including best management practices. The floating home will be consistent with these development standards for the following reasons: A condition is imposed on this permit to ensure that construction will comply with Metro's recommendations on similar proposals, which are to protect the water quality of Lake Union during construction, to prevent wastes or untreated effluents from entering the water; and that all construction should occur on the float to minimize adverse impacts and protect the fish and wildlife habitat conservation areas.

#### C. The Provisions of Chapter [173-27](#) WAC

WAC [173-27](#) establishes basic rules for the permit system to be adopted by local governments, pursuant to the language of RCW [90.58](#). It provides the framework for permits to be administered by local governments, including time requirements of permits, revisions to permits, notice of application, formats for permits, and provisions for review by the State's Department of Ecology (DOE). As the Seattle Shoreline Master Program has been approved by DOE, consistency with the criteria and procedures of SMC Chapter [23.60](#) is also consistency with WAC [173-27](#) and RCW [90.58](#).

#### Conclusion

SMC Section [23.60.064E](#) provides authority for conditioning of shoreline substantial development permits as necessary to carry out the spirit and purpose of and assure compliance with the Seattle Shoreline Code, Chapter [23.60](#), and with RCW [90.58.020](#) (State policy and legislative findings).

Thus, as conditioned below, the proposal is consistent with the criteria for a shoreline substantial development permit and may be approved.

#### **DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT**

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

## **ANALYSIS - SEPA**

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05).

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated December 17, 2003. The information in the checklist and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The Department of Planning and Development has analyzed and annotated the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file. As indicated in the annotated checklist, this action will result in adverse impacts to the environment. However, due to their temporary nature and limited effects, the impacts are not expected to be significant.

The SEPA Overview Policy (SMC 25.05.665D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: “where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,” subject to some limitations. Under such limitations/circumstances (SMC 25.05.665D1.1) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### **Construction Noise Impacts**

The SEPA Noise Policy (SMC 25.05.675B) lists mitigation measures for construction noise impacts. It is our conclusion that limiting hours of construction beyond the requirement of the Noise Ordinance is necessary to mitigate impacts to surrounding properties that will result from the proposal. This is due to the intense density of residential units in the area and the close proximity of these structures to the proposal site. The proposal is, therefore, conditioned to limit construction activity to non-holiday weekday hours between 7:30 a.m. and 6:00 p.m. After the structure is enclosed, interior construction may be done at other times.

### **Underwater Habitat**

No disturbance of the lake bed sediments is expected since all work will be done above water. There is the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. In addition to the requirements set forth by SSMP 23.60.152, the general recommendations from Metro shall also be followed as conditioned below.

## **DECISION SEPA**

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance with conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

## **SEPA AND SHORELINE CONDITIONS**

The following conditions to be enforced during construction shall be posted at the site in a location on the property line that is visible and accessible to the public and to construction personnel from the street right-of-way. If more than one street abuts the site, conditions shall be posted at each street. The conditions will be affixed to placards prepared by DPD. The placards will be issued along with the building permit set of plans. The placards shall be laminated with clear plastic or other waterproofing material and shall remain posted on-site for the duration of the construction.

### **Prior to Issuance of a Construction Permit**

1. Develop a Best Management Practices (BMP) Plan that indicates how construction will take place to ensure that no debris or deleterious material enters the water through the duration of the proposed work.

### **Prior to Commencement of Construction**

1. Notify in writing all contractors and sub-contractors of the general requirements of the Shoreline Master Program (SSMP 23.60.152), and shall be subject to the following:
  - a) The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards, and regulations of water quality management programs and regulatory agencies.
  - b) Best Management Practices shall be employed during the proposed over-water work as necessary to keep debris and deleterious material out of the water. The contractor shall include on the plans a written description of the BMPS that will be used during the proposed work.
  - c) An emergency containment plan and procedures shall be developed for all toxic material that will be kept on site. All necessary equipment for containment and clean-up of this toxic material shall be stocked on the site. A sufficient number of personnel that will be on-site during construction shall be trained in the proper implementation of this plan.

- d) Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water.

During Construction

- 2. In order to further mitigate the noise impacts during demolition and construction, the owner(s) and/or responsible party(s) shall limit the hours of demolition and construction to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. This condition may be modified by the Department to permit work of an emergency nature or to allow low noise interior work after the shells of the structure are enclosed. This condition may also be modified to permit low noise exterior work after approval from the Land Use Planner.
- 3. The owner(s), builder(s), or responsible party(s) shall follow the Best Management Practices and the Emergency Containment plans developed to prevent debris and other deleterious material from entering the water during construction.
  - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
  - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
- 4. Equipment using oil, gasoline, or diesel used on site shall be checked daily for evidence of leakage, if evidence of leakage is found, further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

Signature: (signature on file) Date: April 1, 2004

Bradley Wilburn, Land Use Planner  
Department of Planning and Development